

### REMARKS

Claims 1 - 24 and 33 - 41 are pending and claims 25 - 32 are canceled. The rejections set forth in the Office Action have been overcome by amendment or are traversed by argument below.

Applicants acknowledge that the Examiner does not have the Brody reference, although they believe that the reference was submitted. Applicants will duly resubmit the reference after having obtained another copy.

Applicants thank the Examiner for her helpful comments regarding claim dependency, and have amended the pending claims in compliance therewith.

1. **The pending claims are not anticipated by the cited prior art**

The pending claims stand rejected under 35 U.S.C. §102(b) as being anticipated by European Patent application, Publication No. EP 0608006 to Abaxis, Inc. Applicants have amended independent claim 1 to incorporate the limitation of cancelled claim 8, wherein the platform comprises a mixing microchannel and wherein the mixing microchannel defines a longitudinal path in the surface of the platform having a length sufficient to mix the sample solution and the reagent solutions to a homogenous mixture. Applicants respectfully contend that a mixing microchannel is not disclosed in the cited art; indeed, the only mention of a component for mixing is found at col. 3, lines 54-56, where it is taught that the sample chamber can be a mixing chamber. Applicants respectfully contend that this identify of the mixing chamber taught by the '006 EP application as a specialized type of separation chamber is structurally distinct from the mixing microchannel disclosed in their specification, which is defined explicitly as:

Mixing microchannels are configured to provide mixing of different solutions as the mixture traverses the longitudinal extent of the microchannel. The degree of mixing is dependent on the flow rate of the fluids and the

longitudinal extent of the mixing microchannel, which is proportional to the amount of time the two fluids are in contact and are mixed together. The degree of mixing is also dependent on the lateral extent of the mixing microchannel, and is further dependent on the diffusion constants of the fluids to be mixed. In order to accommodate mixing microchannels having sufficient lengths for mixing fluids having a useful range of viscosities, the mixing microchannels are provided as shown in Figure 5b, wherein mixing is promoted as illustrated in Figure 5b by configuring the microchannel to bend several times as it traverses a path on the platform surface that is perpendicular to the direction of rotation, but extends radially on the surface of the platform from a position more proximal to a position more distal to the axis of rotation. Mixing microchannel **509** has a length of from about 1mm to about 100mm, its length in some cases achieved through the use of bends. Mixing microchannel **509** is provided with a capillary junction of a restriction in the lateral dimension at **510** wherein the interior diameter of the microchannel is reduced by about 0 to 95%, and then joins capillary junction **511**. Capillary junction **511** is larger in the lateral or vertical direction or both than the restriction **510**.

(page 25, line 23 through page 26, line 8).

For all these reasons, the reference does not teach each and every element of the instantly-claimed invention and cannot anticipate the pending claims under 35 U.S.C. § 102(b).

Applicants thus respectfully request that this ground of rejection be withdrawn.

**2. The pending claims are not rendered obvious by the cited prior art**

Claims 1-24 and 33 - 41 stand rejected under 35 U.S.C.

103(a) as being unpatentable over U.S. Patent 6,582,662 (Kellogg '662) in view of U.S. Patent 6,063,589 (Kellogg '589).

Applicants respectfully traverse this ground of rejection with the following argument.

Applicants respectfully inform the Examiner that the Kellogg '662 and Kellogg '589 patents are and have been co-owned at all times during their pendency and to date. The Kellogg '662 and Kellogg '589 patents were originally owned by Gamera Biosciences Corporation, from which the current real party in interest, Tecan Trading AG, acquired all right, title and interest. As a consequence, therefore, the Kellogg '662 and Kellogg '589 patents are commonly-owned with the instant application, and are thus unavailable as prior art to support the asserted rejection on §103 grounds. MPEP § 706.02(1)(1). Thus, the Action fails to set out a *prima facie* case of obviousness.

Applicants thus respectfully contend that rejection under 35 U.S.C. §103 is not supported by the cited art, and request that the Examiner withdraw these grounds of rejection.

**3. Applicants acknowledge the asserted rejections based on obviousness-type double patenting**

Claims 1 - 24 and 33 - 41 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims U.S. Patent No. 6,582,662 (Kellogg et al.) in view of U.S. Patent No. 6,063,589 (Kellogg et al). In addition, claims 1 - 23 stand provisionally rejected under obviousness-type double patenting as being unpatentable over co-pending Application No. 10/746,821 in view of U.S. Patent 6,063,589 (Kellogg et al). Finally, claims 37 and 38 stand

rejected under obviousness-type double patenting as being unpatentable over claims 1 and 2 of co-owned U.S. Patent No. 6,709,869 to Mian et al. in view of U.S. Patent 6,063,589 (Kellogg et al). Applicant acknowledges these double patenting rejections and defers filing a terminal disclaimer until other patentability issues are resolved.

### **CONCLUSIONS**

Applicants believe that all grounds of rejection have been overcome by amendment, and request that the pending claims be passed to issue.

If Examiner Cross believes it to be helpful, the Examiner is invited to contact the undersigned representative by telephone at (312) 913-0001.

Respectfully submitted,  
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